

TITLE 22. EMPLOYMENT TRAINING PANEL

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Employment Training Panel (Panel) proposes to amend Sections 4400(r), 4409.1 and 4415 and to repeal Section 4440.1 of Title 22 of the California Code of Regulations. The Initial Statement of Reasons and Express Text of the proposed action are accessible through the *Pending Regulatory Actions* link on the Home Page of the ETP website (www.etp.ca.gov).

AUTHORITY AND REFERENCE

The Panel's rulemaking authority is contained in Unemployment Insurance (UI) Code section 10205(m).

The Panel is implementing, interpreting and making specific the following UI Code sections:

For section 4400(r): Sections 10200(a), 10201(b)(2)(A), (B), (3), (c), (f), (g), (i), (j), 10202, 10203, 10204(b), 10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), (d), (e), (f), (g), 10210(a), 10211, 10212(a), (b), (c), (d), 10212.1, 10212.2(a), (b), 10213, 10213.5(b), and 10214.5(a).

For section 4409.1: Sections 10205 and 10206.

For section 4415: Section 10200(a).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 4400(r), Payment Earned

The regulation now defines "payment earned" with reference to specific retention and wage requirements, which no longer accurately reflects program standards. It currently captures only some of the retention requirements ETP currently allows for a contractor to earn payment for a given project – employed for 90 consecutive days with a single employer, but no fewer than 500 hours within a maximum of 272 days at a specified wage.

The amendment makes this a general reference to all applicable retention and wage requirements. The amendment also clarifies that "payment earned" means the amount of reimbursement a contractor is entitled to retain upon termination of the contract, based on final billing per trainee.

Amend Section 4409.1, Employer Contributions

This regulation establishes the three primary notification criteria Multiple Employer Contractor (MEC) must follow when charging training-related costs to a participating employer and other procedural requirements the MEC and ETP must follow. It also forbids charging trainees for training costs.

The amendment clarifies the contractual nature of the notification; adds a requirement for prior review and approval of agreement or any writing conveyed by the MEC to participating employer that uses the ETP name or logo; and eliminates an Internet publication procedure that is impractical and has never successfully been implemented. The amendment changes the name to “Participating Employer contribution” for clarity.

Amend 4415, Workforce Training

This regulation caps funds for “supervisors and managers” at 40% of the total population in a given retraining project. The cap is waived for small businesses with 100 or fewer employees. Projects for training in a high performance workplace are exempt.

The amendment clarifies that supervisors and managers are workers who are exempt from overtime pay, consistent with the definition of “frontline workers” in Section 4400(ee). It exempts small business (100 or fewer employees) and entrepreneurial training. The amendment also eliminates the exemption for a high performance workplace because it is difficult to separate this type of training from other aspects of continuous improvement that are typically included in the curriculum for a given retraining project. The amendment changes the name of Section 4415 to “Management Training Cap” for clarity.

Repeal Section 4440.1, Advances

The current regulation establishes criteria for “advance payments” to public agencies and private, nonprofit organizations. Among other things, the regulation caps advances at 15% of funding and requires Department of Finance approval for advances over \$400,000. It also requires a fidelity bond posted through an insurance carrier, naming the Panel as certificate holder; and possibly, a trust surety naming the Panel as beneficiary. The regulation is based on procedures in the Government Code applicable to advance payments on state procurement contracts issued by the EDD and other agencies – not ETP.

Those procedures are inconsistent with UI Code Section 10209(f), which authorizes partial payments of up to 75% of the approved amount of funding once training has started. In short, the regulation is inconsistent with the Panel’s enabling law, burdensome to the public, and unnecessary. For these reasons, it should be repealed.

FISCAL DISCLOSURES

The Panel has made the following initial determinations regarding fiscal disclosures required by Section 11346.2 of the Government Code.

A. Fiscal Impact. The Panel has made an initial determination that the proposed actions do not impose costs or savings requiring reimbursement under Section 17500 *et seq.* of the Government Code. Furthermore, these actions do not impose non-discretionary costs or savings to any local agency; nor do they impact federal funding for the State.

The Panel has made an initial determination that the proposed actions do not impose costs or savings to any State agency pursuant to Section 11346.1(b) or 11346.5(a)(6) of the Government Code. Furthermore, there are no fiscal impact disclosures required by State Administrative Manual sections 6600-6670.

B. Cost Impacts. The Panel is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The same determination applies to housing costs. These actions simply clarify the Panel's definition of Job Creation and thus, there would be no costs associated with these actions.

C. Adverse Impact on Business. The Panel has made an initial determination that the proposed actions do not have any significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

D. Effect on Small Business. The Panel has determined that the proposed actions will not affect small businesses unless they seek training funds. Since this action would clarify and simplify the Panel's standards for reviewing and funding training proposals, this would be a positive effect.

E. Effect on Jobs and Business Expansion. The Panel has made an initial determination that the proposed actions would not create or eliminate jobs in California. Nor would they create new businesses or eliminate existing businesses in California. The Panel has made an initial determination that these actions would not directly affect the expansion of businesses currently operating in California.

F. Imposed Mandate. The Panel has made an initial determination that the proposed actions do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES

The Panel must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. Interested persons are welcome to identify reasonable alternatives during the written comment period.

WRITTEN COMMENT PERIOD

A 45-day written comment period has been established beginning on June 29, 2007 and ending at 5:00 p.m. on August 13, 2007. Any interested person, or his or her authorized representative, may present written comments on the proposed actions within that time period. Comments should be sent to:

Maureen Reilly or Spencer Kenner
Employment Training Panel, Legal Unit
1100 "J" Street, Fourth Floor
Sacramento, CA 95814
Telephone: (916) 327-5252/(916) 327-5578
E-Mail: mreilly@etp.ca.gov; skenner@etp.ca.gov
FAX: (916) 327-5268

PUBLIC HEARING

A public hearing will not be held unless an interested person or his or her authorized representative requests one. The request must be submitted in writing to the above address no later than 5:00 p.m. on the fifteenth day before the written comment period ends. The request should identify the specific regulatory action for which the hearing is requested.

MODIFICATIONS

Modifications to the text of the proposed regulatory actions may be made after the public comment period. If so, they will be posted on the ETP Website at www.etp.ca.gov. Any modifications will be open to public comment for at least 15 days before being adopted, as noticed on the ETP Website.

Per title 1, CA Code of Regulations, section 44, ETP will make the modifications available to all persons that: 1) testified at the public hearing (if held); 2) submitted written comments at the public hearing (if held); 3) commented during the public comment period; and 4) requested the agency notify them that the modifications would be available.

AVAILABILITY OF DOCUMENTS

The Panel has prepared an Initial Statement of Reasons for the proposed actions, and has compiled all information on which the actions were based. This statement, along with the express text of the proposed actions and the written information on which they were based, are available for inspection at the address shown above.

The Panel will prepare a Final Statement of Reasons at the conclusion of the public comment period. This final statement and the information on which it is based will also be available for inspection at the address shown above. This Notice of Proposed Rulemaking is posted on the ETP Website at www.etp.ca.gov. The Initial Statement of Reasons and the express text of the proposed actions are also posted on the ETP Website.

CONTACT PERSONS

Requests for copies of the express text of the proposed actions and the modified text (if any), and the Initial Statement of Reasons, should be directed to the address shown above. In addition, the “rulemaking file” of written information on which the proposed actions are based is available for inspection upon request.